

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

November 4, 2009 Session

IN RE TREVOR M., ET AL.

Appeal from the Chancery Court for Johnson County
No. 5937 Thomas J. Seeley, Jr., Judge¹

No. E2009-00830-COA-R3-PT - FILED JANUARY 21, 2010

Sue Ann M.² (“Mother”) appeals the termination of her parental rights. Tennessee Department of Children’s Services (“DCS”) filed a petition to terminate the parental rights of Mother, Earnest C. S., and Arlie C.³ as to their children Trevor M. (d.o.b. 1/31/03) (“Trevor”) and Brayden M. (d.o.b. 11/11/04) (“Brayden”) (collectively referred to as “the Children”). The trial court terminated Mother’s parental rights after finding by clear and convincing evidence the following: (1) the conditions that led to the Children’s removal from her custody persisted; (2) Mother failed to substantially comply with the requirements of the Permanency Plan; (3) evidence of severe child abuse was present; and (4) termination of Mother’s parental rights was in the best interests of the Children. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed; Case Remanded**

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Francis X. Santore, Jr., Greeneville, Tennessee, for the Appellant, Sue Ann M.

¹Sitting by interchange.

²We do not disclose last names in order to protect the anonymity of the Children discussed in this matter.

³Earnest C.S.’s parental rights to Brayden M. were terminated by court order filed July 20, 2007, and no appeal from that order was made. Arlie C. executed a waiver of interest in any parental rights that he may have in Trevor M. and is therefore not a party to this appeal.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Lindsey O. Appiah, Assistant Attorney General, for the Appellee, Tennessee Department of Children's Services.

OPINION

FACTUAL BACKGROUND

The records show that DCS's involvement with Mother and the Children began in early January 2005, when Child Protective Services received a referral involving Mother's oldest child, Audrey M. ("Audrey"). About two months after Brayden's birth, Audrey was taken to the emergency room by her father, complaining that Mother had punched her in the stomach, choked her, and threatened to kill her. Audrey also claimed that Mother had hit Trevor in the head with a bottle. Mother denied these allegations. After an investigation, the Children remained in Mother's custody and in-home services were put in place to prevent removal.

Trevor and Brayden came into DCS's custody in April 2005 after Brayden was hospitalized with a skull fracture and multiple hematomas.

The petition to terminate parental rights was filed on December 28, 2006. The grounds alleged were (1) persistent conditions, (2) substantial non-compliance with the Permanency Plan, (3) severe abuse and (4) best interest. The initial trial in this matter was held in September 2007, before the Honorable G. Richard Johnson, Chancellor, after which the trial court entered an order terminating Mother's parental rights. However, that order was set aside in August 2008 because Mother's attorney was not licensed to practice law on the dates the case was tried.

Proceedings in the Trial Court

The second trial began in late February 2009. Holly Carter, DCS caseworker, testified that prior to the Children being brought into DCS's custody, prevention services involving parenting and nutrition skills were provided in the home. She explained that Mother's psychological examination resulted in a diagnosis of "bipolar and adjustment disorder with anxiety, alcohol abuse and avoidant [behavior] with borderline personality traits." Ms. Carter testified that two years prior to taking the Children into custody, Mother was hospitalized at Woodridge Psychiatric Hospital for "auditory hallucinations, suicidal ideation, and thoughts of shooting herself." She also noted that Mother was also hospitalized on two occasions in order to detox from drugs.

Ms. Carter further related that after the Children were taken into custody, Mother was treated at Sycamore Shoals Hospital in July 2005 for a multiple drug overdose. Mother was transferred to Woodridge where she admitted that she had overdosed and attempted suicide and stated that she would hurt herself if she lost the Children.

According to Ms. Carter's testimony, in July 2005, Mother was arrested and charged with public intoxication. Three months later, she was charged with DUI, violation of implied consent, open container, and reckless driving. She entered a guilty plea to those charges and was placed on probation. The following month, Mother pled guilty to another public intoxication charge, and in July 2006, she was arrested for assault after a domestic violence incident involving her mother.

In October 2006, Mother was charged with public intoxication and child neglect. After a guilty plea, she was placed on probation. A few months later in March 2007, she was charged with driving on a revoked license, and on the same day, Mother incurred a second offense for the same charge. Also in March 2007, Mother was charged with another DUI offense and failure to stop at stop sign. The Blood Alcohol Test revealed .10 as Mother's blood alcohol level at the time of the incident, and she subsequently pled guilty to reckless endangerment.

While the Children were in DCS's custody, Mother submitted to random drug screens. Ms. Carter testified to the results of the random drug screens as follows:

- (1) September 6, 2005, positive screen for opiates and marijuana.
- (2) September 29, 2005, positive screen for morphine and marijuana.
- (3) October 18, 2005, positive screen for marijuana and benzodiazepines.
- (4) November 3, 2005, positive screen for marijuana.
- (5) November 17, 2005, positive for marijuana and benzodiazepines.
- (6) December 15, 2005, positive for benzodiazepines.
- (7) March 15, 2006, positive for opiates.
- (8) April 25, 2006, positive for opiates and benzodiazepines.
- (9) August 24, 2006, positive for morphine and benzodiazepines.
- (10) August 30, 2006, positive for benzodiazepines and morphine.
- (11) September 25, 2006, positive for morphine.
- (12) February 7, 2006, positive for alcohol.
- (13) January 15, 2007, positive for benzodiazepines.
- (14) April 2, 2007, positive for marijuana.

According to Ms. Carter, the April 2005 Permanency Plan was revised by the Permanency Plan dated September 9, 2005. The revised Plan provided that Mother would:

- (1) Work with her attorney and follow the recommendations of the court;
- (2) Continue to maintain stable housing;
- (3) Obtain and then maintain stable, legal income;
- (4) Work on developing a positive peer group or a positive support group;
- (5) Not allow people with known criminal histories or negative peer influences around her or her children; and
- (6) Obtain and maintain transportation.

Ms. Carter noted that after the Children were removed, Mother left her mother's home and got her own apartment where she lived roughly five months. She then moved in with her boyfriend, David Simcox, in October 2005. Two months later, she moved back with her mother. Subsequently, she moved back and forth between her mother and Mr. Simcox.

Ms. Carter additionally testified that she worked on this case from the early part of 2004 until the latter part of 2007, visiting in the home two times a week. She noted the Plan's initial goal was reunification and that DCS made every effort to accomplish that goal.

Jennifer Icenhour, a Field Supervisor Family Preservation Specialist for Solutions for Children, Families and the Elderly, testified that her agency provides in-home counseling. She indicated that prior to the birth of Brayden, DCS requested that she address concerns with Mother about nutrition, family conflict, and stress issues. Later, other issues such as education, parenting skills, and peer relations were added. She also identified other issues including Trevor's medical condition and Mother's drug use. Ms. Icenhour observed that she typically worked with a parent on average from two to four months. She noted that in this case, she worked with Mother for about three years. Ms. Icenhour testified that there was no significant improvement in Mother's parenting skills, and that she "felt like all the issues that I had been trying to work with [Mother] on, there wasn't any that had been resolved completely. . . ." Thus, Ms. Icenhour did not recommend that the Children return to Mother's custody.

Lula Bell M., Mother's mother, and the Children's grandmother (hereinafter "Grandmother"), testified that she raised Mother's oldest child, Audrey. Grandmother stated that eight or nine people – her children and their children – lived with her. She noted that Mother was residing with her when the Children came into custody. Grandmother testified that Mother was living in North Carolina with James Fletcher, Grandmother's husband, at the time of trial. She expressed her belief that Mother has cleaned her act up in the last year and a half, having no involvement with drugs or alcohol or bad peers.

Kathy Gibson, a lifelong friend of Mother, appeared at the first trial and stated that she allowed Mother to babysit her children, who were ages 3, 5, 7 and 8 at the time. Ms. Gibson indicated that while she was ill, Mother had tended to her children. According to Ms.

Gibson, she observed nothing of a negative nature as far as the nutrition and shelter that Mother provided to Ms. Gibson's children.

Arthur Webb is a licensed alcohol and drug counselor in the State of Tennessee for about 17 to 18 years. Mr. Webb appeared at the first trial and worked with Mother to address her parenting skills and counsel her for drug and alcohol abuse. According to Mr. Webb, Mother's interest and progress in the parenting skills area was positive. When Mother completed the program, Mr. Webb opined that she had the requisite parenting skills to care for the Children. Mr. Webb testified that he observed "a very positive interaction between the [M]other and the two [C]hildren" at a scheduled visitation. Mr. Webb opined that Mother has a strong desire to be a good parent.

On cross examination, Mr. Webb stated that Mother revealed to him several different drugs she used prior to the removal of the Children, such as marijuana, morphine, crack and Oxycontin. During examination by the trial court, Mr. Webb acknowledged that "as of this moment right now, it would be very difficult for her to assume control of the [C]hildren" He further admitted that "the probability was very high" that Mother would resume her drug use if she did not stop associating with people who excessively use drugs and alcohol.

Dr. David Price, the Pediatric Residency Program Director at East Tennessee State University and a Pediatric Hospitalist, testified by deposition for the first trial. Dr. Price stated that he became involved with Brayden, who was four months old at the time, after Brayden was admitted to the general pediatric service at the hospital. Brayden was initially brought to the hospital for vomiting and diarrhea, which had persisted for two to three days. Upon his admission, it was discovered that Brayden had a bulging anterior fontanel.⁴ Dr. Price testified that bulging anterior fontanel indicates that there was increased pressure inside the cranial vault. The CT scan revealed two subdural hematomas and a right parietal skull fracture. Dr. Price became concerned with Brayden's condition considering there was not an adequate explanation for the cause of his injuries. Brayden was subsequently transferred to Vanderbilt University Medical Center where Dr. Noel Tulipan, Pediatric Neurosurgeon, deemed that Brayden's injuries were the result of a non-accidental trauma. Due to the severity of Brayden's injuries, Dr. Price opined that the condition was not caused by one trauma and explained that "non-accidental trauma is the only thing that reasonably fits."

Mother testified that she was 27 years old and was presently residing in North Carolina. She related that her four children are Audrey, age 12; Trevor, age 6; Brayden, age 5; and Haley, age 4 months. According to Mother, she has been sober since September 2007. She claimed that she does not know how Brayden received a skull fracture.

⁴The soft spot of a baby's head where there is actually no skull present.

As to the past charges against her, Mother stated that all had been dismissed except a theft charge and a driver license violation. She noted that the incidents occurred after the Children were taken into DCS's custody. She attempted to justify her misconduct by claiming that she was drinking to ease the pain of having the Children taken away.

Mother admitted that before the Children were taken into custody, she was addicted to methamphetamine and treated in 2001 and 2003 at Woodridge. She stated that one group of friends provided her with methamphetamine and another group provided her with morphine. She noted that Ms. Carter and Ms. Icenhour both cautioned her about associating with Mr. Simcox, who was abusive towards her. Mother observed that as late as July 2007, these so-called friends were still coming around trying to get her to use drugs. She also admitted to lying in the past about how morphine got into her system. Mother related the following criminal charges to which she had pled guilty:

- (1) Public Intoxication; July 19, 2005;
- (2) DUI first offense implied consent, open container, reckless driving; October 19, 2005;
- (3) Public Intoxication and child neglect; October 28, 2006 (she had her daughter with her and was drinking; Mr. Simcox and another were fighting).

Ruling in the Trial Court

After hearing the testimony and considering the evidence, the trial court concluded that DCS had proven by clear and convincing evidence that grounds existed for terminating Mother's parental rights based upon (1) Persistent conditions, (2) Substantial non-compliance with the Permanency Plan, (3) Severe child abuse, and (4) Best interest of the Children. The trial court entered an order terminating Mother's parental rights on March 24, 2009. Mother filed a timely appeal.

ISSUES PRESENTED

Mother presents the following issues for review, which we restate:

- A. Whether the trial court erred in finding by clear and convincing evidence that persistent conditions; substantial non-compliance; and severe child abuse justified termination of Mother's parental rights.
- B. Whether Mother's due process rights were violated when Trevor was removed from her custody without a timely hearing within 72 hours.

STANDARD OF REVIEW

We employ the following standard of review in cases involving the termination of parental rights:

[T]his Court's duty . . . is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006).

The trial court's findings of fact are reviewed de novo upon the record, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. *Id.*; Tenn. R. App. P. 13(d). In weighing the preponderance of the evidence, great weight is accorded to the trial court's determinations of witness credibility, which we will not reverse absent clear and convincing evidence to the contrary. *See Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *Sincy v. Metro Gov't of Nashville*, 182 S.W.3d 815, 818 (Tenn. Ct. App. 2005). Questions of law are reviewed de novo with no presumption of correctness. *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn. 2002).

Biological parents have a fundamental right to the care, custody, and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Swanson*, 2 S.W.3d 180, 187 (Tenn. 1999); *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988). This right "is among the oldest of the judicially recognized liberty interests protected by the Due Process Clauses of the federal and state constitutions." *In re M.J.B.*, 140 S.W.3d 643, 652-53 (Tenn. Ct. App. 2004). "Termination of a person's rights as a parent is a grave and final decision, irrevocably altering the lives of the parent and child involved and 'severing forever all legal rights and obligations of the parent.'" *Means v. Ashby*, 130 S.W.3d 48, 54 (Tenn. Ct. App. 2003) (quoting Tenn. Code Ann. § 36-1-113(l)(1)). "Few consequences of judicial action are so grave as the severance of natural family ties." *M.L.B. v. S.L.J.*, 519 U.S. 102, 119 (1996) (quoting *Santosky v. Kramer*, 455 U.S. 745, 787 (1982)).

While parental rights are superior to the claims of other persons and the government, they are not absolute, and they may be terminated upon appropriate statutory grounds. *See Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002). Due process requires clear and convincing evidence of the existence of the grounds for termination of the parent-child relationship. *In re Drinnon*, 776 S.W.2d at 97. Tenn. Code Ann. § 36-1-113 (Supp. 2008) is a statute governing termination of parental rights in this state. A parent's rights may be terminated only upon "(1) [a] finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

(2)[t]hat termination of the parent’s or guardian’s rights is in the best interests of the child.” Tenn. Code Ann. § 36-1-113(c)(1) - (2); *In re F.R.R., III*, 193 S.W.3d at 530. Both of these elements must be established by clear and convincing evidence. *See* Tenn. Code Ann. § 36-1-113(c)(1); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The existence of at least one statutory basis for termination of parental rights will support the trial court’s decision to terminate those rights. *In re C.W.W.*, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000) (abrogated on other grounds, *In re Audrey S.*, 182 S.W.3d 838 (Tenn. Ct. App. 2005)).

The heightened burden of proof in parental termination cases minimizes the risk of erroneous decisions. *In re C.W.W.*, 37 S.W.3d at 474; *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Evidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable, *State v. Demarr*, No. M2002-02603-COA-R3-JV, 2003 WL 21946726, at *9 (Tenn. Ct. App. M.S., August 13, 2003), and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *In re Valentine*, 79 S.W.3d at 546; *In re S.M.*, 149 S.W.3d 632, 639 (Tenn. Ct. App. 2004); *In re J.J.C.*, 148 S.W.3d 919, 925 (Tenn. Ct. App. 2004). It produces in a fact-finder’s mind a firm belief or conviction regarding the truth of the facts sought to be established. *In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002); *Ray v. Ray*, 83 S.W.3d 726, 733 (Tenn. Ct. App. 2001).

DISCUSSION

A.

Mother contends that the termination grounds found by the trial court – persistent conditions, substantial noncompliance with the Permanency Plan, and severe abuse – were not established by clear and convincing evidence. We address each ground in turn. However, we note that Mother has not challenged the trial court’s ruling that termination of her parental rights was in the best interest of the children pursuant to Tenn. Code Ann. § 36-1-113(g)(8)(B), and we will therefore not discuss that issue.

B.

Mother challenges the trial court’s finding that persistent conditions precluded the return of the Children to her custody. Mother asserts that the trial court failed to take into consideration her behavior and the conditions existing from the end of the first trial in September 2007 to the beginning of the second trial nearly 18 months later. Mother submits, during the relevant time period, she completed drug counseling, was celibate for 13 months,⁵

⁵We note that Mother’s celibacy was not at issue. Considering the fact that Mother gave birth to a fourth child pending these proceedings, the claim cannot be supported. Instead, we believe that Mother

(continued...)

reformed her choice of peers, and her mother's home passed DCS's home study.

DCS responds, despite its efforts to make the necessary services available to her, Mother failed to adequately avail herself of the services that would have helped to address her various issues. Mother continued to fail drug screens throughout the four years that the Children were in DCS custody. DCS notes that Mother also continued to exhibit criminal behavior often linked to her drug and alcohol abuse. In fact, Mother had pending criminal charges at the time of the trial. According to DCS, Mother associated with people with known drug and alcohol issues and criminal proclivities. DCS claims that Mother never demonstrated any stability in her housing situation, bouncing back and forth between her mother's house and that of her abusive boyfriend, a known criminal.

The provisions of Tenn. Code Ann. § 36-1-113(g)(3) state that termination of parental rights is appropriate when:

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home[.]

Termination of parental rights requires clear and convincing evidence of all three factors noted above. *In re Valentine*, 79 S.W.3d at 550. In the instant case, the Children were removed from Mother's care for nearly four years by the time of trial.

⁵(...continued)

meant sobriety when she stated celibacy in her brief. We will address the issues raised substituting celibacy with sobriety.

After examining the record, we find that there is nothing substantial to support Mother's assertion that her behavior and the persistent conditions have changed since the first trial in 2007. The trial court found, by clear and convincing evidence, that all three statutory factors of Tenn. Code Ann. § 36-1-113(g)(3) existed in the instant case, justifying termination of Mother's parental rights, and we agree. Specifically, the trial court found that Mother's lingering problems with drugs and alcohol prevented the return of the Children to her care. The trial court explained:

[T]he proof as to the conditions that led to removal (the injuries to Brayden) and in all probability would cause Trevor and Brayden to be subject to further abuse and neglect are legion. [Mother's] continued use of drugs and alcohol, her several criminal charges, her continued association with known criminals and persons of questionable character and unsafe environment in Lula [M.'s] home where [Mother] generally has stayed were not remedied by the time DCS filed its termination petition [on] December 28, 2006. These conditions were not remedied over the time that DCS had an open file on [Mother] and certainly not between the boys' removal on April 15, 2005, and Ms. Icenhour's closing of her file on [Mother] in September 2007. The period of time during which these conditions continued show clearly that there is little likelihood that they will be remedied.

Mother's own trial testimony indicated that persistent conditions remained and there was little likelihood that Mother would remedy those conditions. On cross-examination, Mother admitted that she used morphine up until and after the date of the first trial. She further admitted that as of July 2007, her friends were still coming around with drugs and she would just make another stupid mistake. Mr. Webb, Mother's counselor, corroborated Mother's issues with drugs and alcohol. He testified that it would be very difficult for her to assume control of the Children right away and that if Mother did not stop hanging around with people who use drugs and alcohol to excess, the probability was very high that Mother would start using again. The record also contains evidence of Mother's numerous failed drug screens, pending criminal charges, and housing instability. It is also important to highlight that while the Children were in DCS custody, Mother gave birth to a fourth child, who was born with methadone withdrawals.

As a result of the above proof, there is nothing in the record that supports Mother's assertion of change. Without such proof, we must conclude that the trial court's findings are supported by clear and convincing evidence. The evidence of Mother's ongoing battle with drug and alcohol abuse sustains the trial court's findings pursuant to Tenn. Code Ann. § 36-1-113(g)(3). Accordingly, we affirm the trial court's ruling on this issue.

C.

Mother next takes issue with the trial court's finding that she failed to substantially comply with the requirements of the Permanency Plan.

When reviewing the termination of parental rights based upon Tenn. Code Ann. § 35-1-113(g)(2), the court must also find that the requirements of the Permanency Plan that the parent allegedly did not satisfy are "reasonable and related to remedying the conditions which necessitate foster care placement." *In re R.L.F.*, 278 S.W.3d 305, 312 (Tenn. Ct. App. 2008) (citing *In re Valentine*, 79 S.W.3d at 547). Tenn. Code Ann. § 36-1-113(g)(2) provides in pertinent part as follows:

(g) Initiation of termination of parental . . . rights may be based upon any of the grounds listed in this subsection (g), . . .

(2) There has been substantial noncompliance by the parent . . . with the statement of responsibilities in a permanency plan. . . .

Id.

In the present case, the Plan, in addition to other requirements, required Mother: (1) to maintain stable housing; (2) to work on a positive support peer group; and (3) to not allow people with known criminal histories or negative peer influences around her or her children.

A review of the record reveals that the trial court correctly found that Mother failed to substantially comply with the requirements of the Plan. Prior to being taken into DCS's custody, the Children lived with Mother in a house where eight or nine other people lived. It was in this environment that Brayden sustained a life-threatening injury of unexplained origin, and Trevor M. experienced serious allergic reactions. Due to the Children's injuries, it was reasonable for DCS to require Mother to find and maintain safe and stable housing for the benefit of the Children.

The trial testimony illustrates Mother's pattern of flip-flopping from her mother's home to Mr. Simcox's apartment. Mother roamed from Shoun's Manor to the homes of different friends. At the time of the second trial, she lived in North Carolina with James Fletcher, her mother's husband. Thus, it appears Mother lived a nomadic lifestyle without any housing stability. Therefore, the trial court's finding that Mother failed to provide a safe and stable home for the Children is supported by clear and convincing evidence.

Turning to the remaining requirements, the proof presented at trial shows that Mother continued to associate with individuals who had criminal records, used drugs, and abused alcohol. In particular, she maintained contact with the abusive boyfriend. Mother claimed that her friend, April Early, drugged her eggs with morphine causing her to test positive for morphine in a September 2005 drug screen. Mother was also with Ms. Early at the time she was charged with DUI in November of 2005.

Mother testified that a crowd of friends led to her addiction to methamphetamine and the influence of a different group of friends resulted in her addiction to morphine. Because of Mother's choice in friends, she continued to abuse drugs and alcohol, which contributed to her criminal behavior. Mother also testified that she remained in contact with individuals with criminal backgrounds although DCS counseled her to end those contacts. Admittedly, the reasonableness of requiring Mother to abstain from illicit drug use and to avoid peers with criminal backgrounds and problems with drugs and alcohol seems obvious. However, in light of the Children's injuries, it was critically important for Mother to completely reform her behavior and choices in peers if she desired reunification with the Children. The record indicates that Mother failed to implement the necessary changes in her life in order to comply with the remaining requirements of the Plan.

We find nothing in the record that contradicts the trial court's finding that Mother failed to substantially comply with the above requirements of the Plan. There is ample evidence in the record to support the trial court's finding regarding Mother's substantial non-compliance with the Plan. Maintaining a stable home and remaining drug free were reasonable requirements, and Mother failed to show little progress regarding those requirements. Therefore, we affirm and hold that the evidence clearly and convincingly supports the trial court's finding that Mother's noncompliance with her Permanency Plan was substantial.

D.

Mother claims that the trial court failed to find by clear and convincing evidence that she knowingly "exposed" or "failed" to protect her children from "great bodily harm or death" within the meaning of Tenn. Code Ann. § 37-1-102(a)(21)(A) (Supp. 2008)⁶ Tenn. Code Ann. § 36-1-113(g)(4) (Supp. 2008) states:

Initiation of termination of parental . . . rights may be based upon. . .

⁶ Effective July 1, 2009, "Severe child abuse" is defined at subsection (23) instead of (21). For purposes of this opinion, we will use the citation in effect at the time of the events and trial.

(4) The parent or guardian has been found to have committed severe child abuse as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights.

...

Id. Section 37-1-102(a)(21)(A) & (B) defines severe child abuse as:

(A) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause great bodily harm or death and the knowing use of force on a child that is likely to cause great bodily harm or death;

(B) Specific brutality, abuse or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or retardation, or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct[.]

Tenn. Code Ann. § 37-1-102(a)(A) & (B).

In the instant case, Brayden suffered a serious head trauma. Dr. Price testified that Brayden sustained "a linear skull fracture the most common kind associated with trauma, some kind of force applied to the skull. That because of the multiple subdural and subdural hematomas of different ages it did not result from one incident." Dr. Price further indicated that there was a significant or substantial force causing Brayden's injury, and that such injury likely could cause great bodily harm or death if not treated.

At trial, Mother did not offer a credible explanation for Brayden's injuries. The trial court noted,

One injury, even as severe as these were possibly would not prove a knowing exposure or failure to protect a child but these three serious injuries apparently sustained at different times show at the least a conscious disregard for the safety of Brayden.

In our view, the trial court properly found that Mother committed severe child abuse. The medical evidence is undisputed concerning the cause of Brayden's head injuries. Under the clear and convincing standard, the evidence demonstrates Mother's failure to protect Brayden from serious bodily harm. Brayden's repeated and multiple head injuries signify abuse

warranting termination of Mother's parental rights. Accordingly, we affirm.

E.

Mother raises two final issues on appeal that we will address together in our discussion. Mother argues that there was no legal cause to initially remove Trevor ; Mother also asserts a due process violation because DCS failed to provide her with a hearing within 72 hours of the removal of Trevor. However, Mother does not deny that she was afforded complete procedural safeguards at the termination proceeding upon which this appeal is based.

Because the termination proceeding provided Mother with the procedural safeguards that due process demands, her assertions are without merit. In *In re S.Y.*, 121 S.W.3d 358 (Tenn. Ct. App. 2003), this court held that any violation of due process rights that may have occurred at the dependent and neglect proceeding was fully remedied by the procedural protections provided at the termination trial. *Id.* at 365 (citing *In re Hoover- Crawford*, No. M2000-10655-COA-R3-CV, 2001 WL 846044 (Tenn. Ct. App. M.S., July 27, 2001). “[A] trial court’s decision should not be reversed for any deprivation of due process that occurred at an initial dependency and neglect proceeding when [appellant] was afforded full procedural protection.” *Id.*; *see also State v. Wilkerson*, No. 03A01-9810-JV-00341, 1999 WL 775759, at *1 (Tenn. Ct. App. E.S., Sept. 15, 1999). Therefore, these issues are moot.

CONCLUSION

Upon a thorough review of the record, this court concludes that the preponderance of the evidence demonstrates by clear and convincing evidence, that persistent conditions; substantial noncompliance with the Permanency Plan; and severe abuse justified termination of Mother's parental rights.

Therefore, the judgment of the trial court is affirmed in its entirety. Costs on appeal are taxed to the Appellant, Sue Ann M. This case is remanded to the trial court for enforcement of the court's judgment and for the collection of costs assessed below, all pursuant to applicable law.

JOHN W. McCLARTY, JUDGE

